UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

Gwendolyn Brown v. Julie M. Talavera, et al.

Brown · No. No. 25-1199, Div. (2) · Decided April 23, 2026

SUMMARY

The United States District Court for the Eastern District of Louisiana grants Diabetes & Metabolism Associates, APMC's motion to dismiss Gwendolyn Brown's Title VII and Louisiana employment-discrimination claims for failure to allege that the defendant employed the requisite number of employees. The dismissal is without prejudice to amendment, and Brown is granted 14 days to file an amended complaint if she can provide sufficient allegations consistent with Rule 11. The court does not reach the defendant's other arguments concerning the sufficiency and timeliness of the claims.

CASE DETAILS

COURT	United States District Court for the Eastern District of Louisiana
WRITING FOR THE COURT	Donna Phillips Currault
JURISDICTION	United States District Court for the Eastern District of Louisiana
DECIDED	April 23, 2026
DOCKET	No. 25-1199, Div. (2)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought employment-discrimination claims under Title VII and the Louisiana Employment Discrimination Law. Defendant Diabetes & Metabolism Associates, APMC moved under Federal Rule of Civil Procedure 12(b)(6), and the unopposed motion was granted with leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true and considers whether the complaint states a plausible claim for relief. The court does not accept conclusory allegations, unwarranted factual inferences, or legal conclusions as true. Dismissal is proper when a bar to relief appears on the face of the complaint.
PRECEDENTIAL VALUE	Unknown; federal district court order.

PARTIES	Gwendolyn Brown v. Diabetes & Metabolism Associates, APMC, Julie M. Talavera

TOPICS

motions to dismiss · employment discrimination · title vii · racial discrimination · civil procedure

PRACTICE AREAS

civil procedure · employment law · civil rights

QUESTIONS PRESENTED

1. Whether the amended complaint stated a Title VII or Louisiana Employment Discrimination Law claim when it failed to allege that the defendant employed the number of employees required to qualify as an employer.
2. Whether the court should grant leave to amend despite the plaintiff's prior amendments and failure to oppose the motion.
3. Whether the complaint should be dismissed for failure to plead a prima facie case or as untimely under the applicable administrative-exhaustion and limitations rules.

HOLDINGS

1. The amended complaint failed to state a claim because it contained no allegations establishing that Diabetes & Metabolism Associates, APMC, qualified as an employer under Title VII or the Louisiana Employment Discrimination Law.
2. A plaintiff need not plead facts sufficient to establish a prima facie case under the McDonnell Douglas framework to survive a motion to dismiss, although the plaintiff must plead sufficient facts on the ultimate elements of a disparate-treatment claim to make the claim plausible.
3. Brown was entitled to 14 days to amend because she had not yet had an opportunity to amend the complaint asserting claims against her employer, and the record did not establish that amendment would be futile or that she was unwilling or unable to cure the pleading deficiency.

KEY QUOTATIONS

> *"Accordingly, Plaintiff has failed to state a claim for relief under Title VII or the LEDL because those provisions apply only to an "employer" as defined therein."* (Section III)

> *"If Plaintiff can, consistent with her obligations under Rule 11, allege that Defendant Diabetes & Metabolism Associates employed the requisite number of employees as necessary to state a claim, Plaintiff will be granted 14 days within which to do so."* (Section III)

FACTUAL BACKGROUND

Brown filed a form employment-discrimination complaint alleging that her termination was based on race and color. She later amended the complaint to identify Diabetes & Metabolism Associates, APMC, as her former employer, alleging that her supervisor treated others respectfully, singled her out and ostracized her because of race, imposed a greater workload on her, and retaliated after she raised concerns internally. The complaint did not allege how many employees the defendant employed during the relevant period. Brown attached an EEOC determination and notice of rights dated March 12, 2025, but not her EEOC charge.

PROCEDURAL HISTORY

Brown initially sued Julie M. Talavera based on alleged race- and color-based employment discrimination. The court dismissed claims against Talavera because she was not Brown's employer, granted leave to amend, later reopened the case to permit another amendment, and then dismissed the amended claims against Talavera for the same reason. Brown added her former employer, Diabetes & Metabolism Associates, APMC, as a defendant, which then moved to dismiss. The court granted that motion but allowed Brown 14 days to file another amended complaint alleging facts establishing the employer numerosity requirement.

DISPOSITION

other

CASES CITED

- Edward H. Bohlin Co., Inc. v. Banning Co., 6 F.3d 350, 356 (5th Cir. 1993)
- Webb v. Morella, 457 F. App'x 448, 452 & n.4 (5th Cir. 2012)
- Ramsey v. Signal Delivery Serv., Inc., 631 F.2d 1210, 1214 (5th Cir. 1980)
- Sewell v. Monroe City School Board, 974 F.3d 577, 581 (5th Cir. 2020)
- Kirkland v. Big Lots Store, Inc., 547 F. App'x 570, 572 (5th Cir. 2013)
- Jones v. Alcoa, Inc., 339 F.3d 359, 366 (5th Cir. 2003)
- Clark v. Amoco Production Co., 794 F.2d 967, 970 (5th Cir. 1986)
- Ashcroft v. Iqbal, 556 U.S. 662 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 545, 555, 557-58, 569-70 (2007)
- Lormand v. U.S. Unwired, Inc., 565 F.3d 228, 257 (5th Cir. 2009)
- Gonzales v. Kay, 577 F.3d 600, 603 (5th Cir. 2009)
- Ferrer v. Chevron Corp., 484 F.3d 776, 780 (5th Cir. 2007)
- Gentilello v. Rege, 627 F.3d 540, 544 (5th Cir. 2010)
- Cutrer v. McMillan, 308 F. App'x 819, 820 (5th Cir. 2009) (per curiam)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Swierkiewicz v. Sorema N.A., 534 U.S. 506, 510-12 (2002)
- Raj v. Louisiana State University, 714 F.3d 322, 331 (5th Cir. 2013)
- Chhim v. University of Texas at Austin, 836 F.3d 467, 470 (5th Cir. 2016) (per curiam)
- Wright v. Union Pacific Railroad Co., 990 F.3d 428, 433 (5th Cir. 2021)

- Cicalese v. University of Texas Medical Branch, 924 F.3d 762, 767-68 (5th Cir. 2019)
- Whitlock v. Lazer Spot, Inc., 657 F. App'x 284, 286 (5th Cir. 2016)
- Kanida v. Gulf Coast Medical Personnel LP, 363 F.3d 568, 576 (5th Cir. 2004)
- Hamilton v. Dallas County, 79 F.4th 494, 502 (5th Cir. 2023) (en banc)
- Stone v. Louisiana Department of Revenue, 590 F. App'x 332, 339 (5th Cir. 2014)
- Arbaugh v. Y&H Corp., 546 U.S. 500, 513, 516 (2006)
- Lowrey v. Pettit, 737 So. 2d 213, 216 (La. App. 2 Cir. 1999)
- King v. Phelps Dunbar, L.L.P., 743 So. 2d 181, 187 (La. 1999)
- In re Asbestos Plaintiffs v. Borden, Inc., 826 So. 2d 581, 589 (La. App. 4 Cir. 2002)
- Rivero v. Fidelity Investments, Inc., 1 F.4th 340, 344 (5th Cir. 2021)
- Taylor v. Books A Million, Inc., 296 F.3d 376, 378-80 (5th Cir. 2002)
- Jones v. City of Houston, 756 F. App'x 341, 348 (5th Cir. 2018) (per curiam)
- National Railroad Passenger Corp. v. Morgan, 536 U.S. 101, 109 (2002)
- Conner v. Louisiana Department of Health and Hospitals, 247 F. App'x 480, 481 (5th Cir. 2007)
- Mennor v. Fort Hood National Bank, 829 F.2d 553, 555-56 (5th Cir. 1987)
- Jay v. International Salt Co., 868 F.2d 179, 180 n.1 (5th Cir. 1989)
- Cook v. Lee College, 798 F. Supp. 417, 420-21 (S.D. Tex. 1992)
- Harrison v. Mayorkas, No. 21-161, 2022 WL 2237135, at *2-3 (E.D. La. June 21, 2022)
- Stewart v. Smitty's Supply, Inc., No. 18-10058, 2020 WL 433362, at *2 (E.D. La. Jan. 28, 2020)
- Woods v. Delta Air Lines, Inc., No. 25-10505, 2025 WL 2986375, at *2 (5th Cir. Oct. 23, 2025)
- F.D.I.C. v. Conner, 20 F.3d 1376, 1385 (5th Cir. 1994)
- Dierlam v. Trump, 977 F.3d 471, 478 n.44 (5th Cir. 2020)
- Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994)
- Hart v. Bayer Corp., 199 F.3d 239, 247 n.6 (5th Cir. 2000)
- Neitzke v. Williams, 490 U.S. 319, 329-30 (1989)
- Irizarry v. Secretary, Florida Department of Corrections, No. 21-10591, 2021 WL 3231163, at *1 n.1 (11th Cir. July 22, 2021)
- Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 329 (5th Cir. 2002)
- Hale v. King, 642 F.3d 492, 503 (5th Cir. 2011)
- Brown v. Brown, 842 F. App'x 948, 949 (5th Cir. 2021)
- Mendoza-Tarango v. Flores, 982 F.3d 395, 402 (5th Cir. 2020)
- Jones v. Greninger, 188 F.3d 322, 327 (5th Cir. 1999)

OPINION

Brown
PER CURIAM.
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA
GWENDOLYN BROWN * CIVIL ACTION
VERSUS * NO. 25-1199 DIV. (2)
JULIE M. TALAVERA, ET AL. * MAG. JUDGE CURRAULT
ORDER AND REASONS

Before me is a Motion to Dismiss for Failure to State a Claim filed by Defendant Diabetes & Metabolism Associates, APMC. ECF No. 32. The motion was scheduled for submission on April 22, 2026. As of this date, Plaintiff has failed to file an Opposition Memorandum, the deadline for which expired on Tuesday, April 14, 2026. See E.D. La. L.R. 7.5. No party requested oral argument, and the Court agrees that oral argument is unnecessary. This matter was referred for all proceedings including entry of judgment in accordance with 28 U.S.C. § 636(c) upon the written consent of all parties. ECF Nos. 13, 33. Considering the record, the submissions, and the applicable law, Defendant Diabetes & Metabolism Associates' Motion to Dismiss is GRANTED, but with leave to amend, for the reasons stated herein.

I. BACKGROUND

Plaintiff Gwendolyn Brown filed a form Complaint for Employment Discrimination on June 11, 2025, checking the boxes asserting that her termination from employment was based on her race and color. ECF No. 1 ¶ III(A), (D), at 4. Plaintiff named as a defendant Dr. Julie M. Talavera. Id. ¶ I(B), at 2. Plaintiff left blank ¶ III(E), which is the space provided to specify the factual basis for the claim. Id. at 4-5. Plaintiff attached the EEOC determination and notice of rights letter dated March 12, 2025, but not her charge of discrimination. ECF No. 1-1. This Court granted Talavera's motion to dismiss for failure to state a claim on the basis that she was not Plaintiff's employer, but granted Plaintiff leave to amend. ECF No. 15. When Plaintiff failed to amend within the specified deadline, the Court dismissed her case but later re- opened it on Plaintiff's motion to allow her another opportunity to name her employer. ECF Nos. 16, 17, 19, 21, 23. Plaintiff thereafter filed the Amended Complaint at issue adding her former employer, Diabetes & Metabolism Associates, APMC, as a defendant. ECF No. 24. The Court granted Talavera's second motion to dismiss as to the Amended Complaint for the same reasons previously stated. ECF Nos. 26, 28. Defendant Diabetes & Metabolism Associates now moves to dismiss Plaintiff's claims. ECF No. 32. Defendant articulates three reasons for dismissal: (1) Plaintiff fails to allege facts necessary to state a prima facie case (ECF No. 32-1 at 6-9); (2) Plaintiff fails to allege that Defendant satisfies the statutory definition of employer, and it does not employ 15 or more employees, as required by Title VII and the Louisiana anti-discrimination laws (id. at 9-10); and
(3) Plaintiff's complaint is untimely (id. at 10-11). Defendant requests that the case be dismissed with prejudice and without leave to amend because Plaintiff has been provided numerous opportunities for amendment. Id. at 11-12.

II. APPLICABLE LAW

Although the Court generally has the authority to grant a motion as unopposed, it is not required to do so.1 Moreover, when the unopposed motion is a motion to dismiss with prejudice, the court should not grant the motion solely because it is unopposed, without considering the merits of the arguments or less severe options.2 1 Edward H. Bohlin Co., Inc. v. Banning Co., 6 F.3d 350, 356 (5th Cir. 1993). 2 See Webb v. Morella, 457 F. App'x 448, 452 & n.4 (5th Cir. 2012) (citation omitted) (vacating dismissal with prejudice for failure to file opposition in accordance with Local Rules in the absence of a clear record of contumacious conduct or extreme delay and where the court failed to consider less severe sanctions); Ramsey v. Signal Delivery Serv., Inc., 631 F.2d 1210, 1214 (5th Cir. 1980) (vacating dismissal because the court should have considered sanction other than dismissal with prejudice for failure to observe a filing deadline). A. Rule 12(b)(6) Standard Federal Rule of Civil Procedure 12(b)(6) provides that an action may be dismissed "for failure to state a claim upon which relief can be granted." "A motion to dismiss for failure to state a claim is not meant to resolve disputed facts or test the merits of a lawsuit."3 Rather, it tests whether, in plaintiff's best-case scenario, the complaint states a plausible case for relief.4 If the failure to exhaust administrative remedies is established by the pleadings and the other properly considered documents, then dismissal under Rule 12(b)(6) is appropriate.5 The Supreme Court clarified the Rule 12(b)(6) standard of review in Ashcroft v. Iqbal, 556 U.S. 662 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). To avoid dismissal, a complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face (i.e., the factual allegations must "be enough to raise a right to relief above the speculative level")6 and provide a reasonable expectation that discovery will reveal evidence as to each element of the asserted claims.7 Thus, it is not enough to allege facts consistent with a claim because the allegations must move past possibility and to plausibility of "entitlement to relief."8 If the "facts" alleged are "merely consistent" with those minimally required to establish liability, the complaint "stops short of the line between possibility and plausibility."9 Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit 3 Sewell v. Monroe City Sch. Bd., 974 F.3d 577, 581 (5th Cir. 2020). 4 Id. 5 Kirkland v. Big Lots Store, Inc., 547 F. App'x 570, 572 (5th Cir. 2013) ("A statute of limitations may support dismissal under Rule 12(b)(6) where it is evident from the plaintiff's pleadings that the action is barred and the pleadings fail to raise some basis for tolling or the like.") (quoting Jones v. Alcoa, Inc., 339 F.3d 359, 366 (5th Cir. 2003)); see also Clark v. Amoco Prod. Co., 794 F.2d 967, 970 (5th Cir. 1986) ("[A] claim may also be dismissed if a successful affirmative defense appears clearly on the face of the pleadings."). 6 Twombly, 550 U.S. at 555, 570 (citation omitted). 7 Lormand v. U.S. Unwired, Inc., 565 F.3d 228, 257 (5th Cir. 2009) (quoting Twombly, 550 U.S. at 545). 8 Twombly, 550 U.S. at 557–58; Iqbal, 556 U.S. at 678. 9 Iqbal, 556 U.S. at 678 (citation omitted). the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "shown"— "that the pleader is entitled to relief."10 The complaint need not contain detailed factual allegations, but it must offer more than unadorned accusation devoid of factual support, labels, legal conclusions, or formulaic recitations of the elements of a cause of action as "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."11 Although all well-pleaded facts are accepted as true and the complaint is considered in the light most favorable to the plaintiff, the Court should not accept as true "conclusory allegations, unwarranted factual inferences, or legal conclusions."12 "Dismissal is appropriate when the complaint 'on its face show[s] a bar to relief.'"13 In addressing Rule 12 in the discrimination context, the Supreme Court has held that a plaintiff need not plead facts sufficient to establish a prima facie case under the McDonnell Douglas14 framework to survive a motion to dismiss.15 Although the Court rendered Swierkiewicz before it clarified the pleading standard in Twombly and Iqbal, Swierkiewicz's primary holding— that a plaintiff need not establish a prima facie case under McDonnell Douglas at the pleading stage—is still good law.16 Interpreting Swierkiewicz post-Twombly and Iqbal, the Fifth Circuit has held that a plaintiff must "plead sufficient facts on all of the ultimate elements of a disparate

10 Id. at 679 (citation modified) (quoting FED. R. CIV. P. 8(a)(2)); see also Gonzales v. Kay, 577 F.3d 600, 603 (5th

Cir. 2009) (citation omitted) (stating that where the facts do not allow the court to infer more than a mere possibility of misconduct, the complaint does not show that the pleader is entitled to relief). 11 Iqbal, 556 U.S. at 678 (citations omitted). 12 Ferrer v. Chevron Corp., 484 F.3d 776, 780 (5th Cir. 2007) (citation omitted); Gentilello v. Rege, 627 F.3d 540, 544 (5th Cir. 2010) (same); see also Twombly, 550 U.S. at 555 ("[The] obligation to provide the grounds of [ ] entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." (citations and internal quotation marks omitted)). 13 Cutrer v. McMillan, 308 F. App'x 819, 820 (5th Cir. 2009) (per curiam) (citation omitted). 14 McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). 15 See Swierkiewicz v. Sorema N.A., 534 U.S. 506 511 (2002) ("This Court has never indicated that the requirements for establishing a prima facie case under McDonnell Douglas also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss."); see also Raj v. La. State Univ., 714 F.3d 322, 331 (5th Cir. 2013) (citing Swierkiewicz, 534 U.S. at 510–12). 16 See Twombly, 550 U.S. at 569-70. treatment claim to make his case plausible."17 The ultimate question in a Title VII discrimination case is "whether a defendant took the adverse employment action against a plaintiff because of her protected status."18 Thus, a plaintiff must allege facts—either direct or circumstantial—plausibly showing an adverse employment action taken against her because of her protected status or that defendant treated similarly situated employees outside of her protected class more favorably.19 B. Title VII/LEDL's Numerosity Requirement Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race.20 The term "employer" is specifically defined in both Title VII and the LEDL. Title VII defines "employer" as "a person engaged in an industry affecting commerce who has fifteen or more employees."21 Like Title VII, the LEDL applies "only to an employer who employs more than fifteen employees within [Louisiana] for each working day in each of twenty or more calendar weeks in the current or preceding calendar year."22 The Supreme Court has explained that Title VII's "15-or-more-employees" requirement is the threshold number of employees for application of Title VII; thus, it is an element of a plaintiff's 17 Chhim v. Univ. of Tex. at Austin, 836 F.3d 467, 470 (5th Cir. 2016) (per curiam) (citing Raj, 714 F.3d at 331); accord. Wright v. Union Pac. R.R. Co., 990 F.3d 428, 433 (5th Cir. 2021) (quoting Cicalese v. Univ. of Tex. Med. Branch, 924 F.3d 762, 768 (5th Cir. 2019)). 18 Whitlock v. Lazer Spot, Inc., 657 F. App'x 284, 286 (5th Cir. 2016) (quoting Raj, 714 F.3d at 331 (quoting Kanida v. Gulf Coast Med. Personnel LP, 363 F.3d 568, 576 (5th Cir. 2004))). 19 Raj, 714 F.3d at 331; see also Hamilton v. Dallas Cnty., 79 F.4th 494, 502 (5th Cir. 2023) (en banc) (citing cases); Cicalese, 924 F.3d at 767 (citations omitted);; see also Chhim, 836 F.3d at 470 (citation omitted); Stone v. La. Dep't of Revenue, 590 F. App'x. 332, 339 (5th Cir. 2014). 20 42 U.S.C. § 2000e-2(a)(1). 21 Arbaugh v. Y&H Corp., 546 U.S. 500, 513 (2006) (quoting 42 U.S.C. § 2000e(b)). 22 LA. REV. STAT. § 23:302(2); see also Lowrey v. Pettit, 737 So. 2d 213, 216 (La. App. 2 Cir. 1999). Because the Louisiana employment discrimination provisions are similar to Title VII, Louisiana courts construe the Louisiana provisions consistently with federal courts' interpretation of Title VII. King v. Phelps Dunbar, L.L.P., 743 So. 2d 181, 187 (La. 1999); In re Asbestos Plaintiffs v. Borden, Inc., 826 So. 2d 581, 589 (La. App. 4 Cir. 2002). claim for relief.23 As the numerosity requirement is an essential element of a discrimination claim, allegations regarding same relate to the substantive adequacy of the claim.24 C. Administrative Exhaustion A plaintiff alleging discrimination under Title VII must exhaust administrative remedies before filing suit.25 The filing of a timely EEOC charge is a statutory prerequisite to suit under Title VII.26 In a deferral state, such as Louisiana, a plaintiff has 300 days from the discriminatory act to file the charge with the EEOC.27 Any claim filed later than 300 days after the discriminatory act is time barred.28 Thus, the failure to file a charge of unlawful discrimination within the applicable time period bars a plaintiff from proceeding with a civil action.29 In addition, a plaintiff must file suit within 90 days of receipt of the EEOC's determination notice.30 The 90-day limitation period is strictly construed, and it begins to run on the date plaintiff receives the EEOC right-to-sue letter.31 When the date on which a right-to-sue letter was actually received is either unknown or disputed, presumption of receipt within three to seven days of mailing is appropriate.32 Although some courts have imputed notice to the plaintiff based on the 23 Arbaugh, 546 U.S. at 516. 24 Rivero v. Fid. Invs., Inc., 1 F.4th 340, 344 (5th Cir. 2021) (quoting Arbaugh, 546 U.S. at 504). 25 Taylor v. Books A Million, Inc., 296 F.3d 376, 378–79 (5th Cir. 2002); see also Jones v. City of Houston, 756 F. App'x 341, 348 (5th Cir. 2018) (citing 42 U.S.C. § 2000e-5(f)(1)) (per curiam). 26 Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 109 (2002). 27 Conner v. La. Dep't of Health and Hosps., 247 F. App'x 480, 481 (5th Cir. 2007) ("[W]hen a claimant submits an EEOC charge and, pursuant to a work-sharing agreement, the EEOC accepts it on behalf of a deferral state, the claimant is deemed to have initially instituted proceedings with the state agency and the 300–day period is triggered." (citations omitted)); see also Time Limits for Filing a Charge, U.S. EQUAL EMP. OPP. COMM'N, https://www.eeoc.gov/time-limits-filing-charge (last visited Apr. 22, 2026). 28 See Mennor v. Fort Hood Nat'l Bank, 829 F.2d 553, 555–56 (5th Cir. 1987); Taylor, 296 F.3d at 378–79; see also Jones, 756 F. App'x at 348. 29 See, e.g., Jay v. Int'l Salt Co., 868 F.2d 179, 180 n.1 (5th Cir. 1989); Cook v. Lee Coll., 798 F. Supp. 417, 420-21 (S.D. Tex. 1992). 30 § 2000e-5(f)(1). 31 Harrison v. Mayorkas, No. 21-161, 2022 WL 2237135, at *2 (E.D. La. June 21, 2022) (Roby, M.J.) (citations omitted). 32 Stewart v. Smitty's Supply, Inc., No. 18-10058, 2020 WL 433362, at *2 (E.D. La. Jan. 28, 2020) (Vance, J.) (citing Taylor, 296 F.3d at 379-80). date the EEOC emailed the notice of rights,33 the Fifth Circuit avoided the issue but applied the 3- day rule when the EEOC both emailed notice and later mailed a copy to an untimely filing.34 D. Leave to Amend "The court should freely give leave [to amend a pleading] when justice so requires."35 Generally, before dismissing a pro se complaint under Rule 12(b)(6), unless amendment would be futile, the court should give the plaintiff notice of the complaint's deficiencies and an opportunity to amend.36 As the Supreme Court stated: Under Rule 12(b)(6), a plaintiff with an arguable claim is ordinarily accorded notice of a pending motion to dismiss for failure to state a claim and an opportunity to amend the complaint before the motion is ruled upon. These procedures alert him to the legal theory underlying the defendant's challenge, and enable him meaningfully to respond by opposing the motion to dismiss on legal grounds or by clarifying his factual allegations so as to conform with the requirements of a valid legal cause of action.37 Unless it is clear that a plaintiff is unwilling or unable to amend in a manner that will avoid dismissal, the court errs in not providing a pro se plaintiff with at least one opportunity to cure 33 Woods v. Delta Air Lines, Inc., No. 24-1759, 2025 WL 966922, at *5 (N.D. Tex. Feb. 27, 2025) (citing cases finding 90-day clock starts on date of email necessary to preclude a plaintiff from indefinitely extending the 90-day period by refusing to open the email), R.&R. adopted, 2025 WL 963371 (N.D. Tex. Mar. 31, 2025), aff'd, No. 25-10505, 2025 WL 2986375 (5th Cir. Oct. 23, 2025); see also Harrison, 2022 WL 2237135, at *2-3 (holding that 90-day limitation period began to run from receipt of EEOC email, even when the email was not read on that date); Boyd v. Monroe City Hall, No. 20-1473, 2021 WL 1305385, at *4 (W.D. La. Mar. 8, 2021) (holding that EEOC email of determination notice triggered 90 day period, even when email was deposited in plaintiff's spam folder), R.&R. adopted, 2021 WL 1299204 (W.D. La. Apr. 7, 2021); Sloan v. Mem'l Hosp. at Gulfport, No. 21-86, 2021 WL 2666858, at *3 (S.D. Miss. June 29, 2021) (refusing to reconsider dismissal where plaintiff alleged date of receipt of EEOC Notice). 34 Woods v. Delta Air Lines, Inc., No. 25-10505, 2025 WL 2986375, at *2 (5th Cir. Oct. 23, 2025). 35 FED. R. CIV. P. 15(a)(2); see F.D.I.C. v. Conner, 20 F.3d 1376, 1385 (5th Cir. 1994) (noting that Rule 15(a) "evinces a strong bias in favor of granting . . . leave to amend a pleading"). 36 Meeks v. DeBouse, No. 24-10431, 2024 WL 4457846, at *1 (5th Cir. Oct. 10, 2024) (citing Eason v. Thaler, 14 F.3d 8, 9 (5th Cir. 1994)); Hart v. Bayer Corp., 199 F.3d 239, 247 n.6 (5th Cir. 2000) (citation omitted). 37 Neitzke v. Williams, 490 U.S. 319, 329-30 (1989), superseded by statute on other grounds as stated in Irizarry v. Sec'y, Fla. Dep't. of Corr., No. 21-10591, 2021 WL 3231163, at *1 n.1 (11th Cir. July 22, 2021). pleading deficiencies before dismissing.38 When, however, the "complaint alleges the plaintiff's best case," a further factual statement from the plaintiff need not be allowed.39

III. ANALYSIS

While Plaintiff alleges that Defendant was her employer, the Amended Complaint fails to include any allegation regarding the number of employees employed by Defendant during the relevant period. Thus, Plaintiff has failed to allege that Defendant qualifies as an "employer," as defined by Title VII and the LEDL. Accordingly, Plaintiff has failed to state a claim for relief under Title VII or the LEDL because those provisions apply only to an "employer" as defined therein. Having found that Plaintiff has failed to state a claim due to the absence of any allegations regarding the number of employees employed by Defendant, the Court need not address whether Plaintiff's allegations survive Rule 12(b)(6)40 or she filed a timely complaint.41 Although Plaintiff has previously amended the complaint she initially filed against Talavera, Plaintiff has not yet had the opportunity to amend her Amended Complaint asserting her claims against Defendant Diabetes & Metabolism Associates. At this point, the Court has no basis to determine that she is unwilling or unable to amend. And while Defendant asserts that an 38 Dierlam v. Trump, 977 F.3d 471, 478 n.44 (5th Cir. 2020) (quoting Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 329 (5th Cir. 2002)); see also Hale v. King, 642 F.3d 492, 503 (5th Cir. 2011) (cleaned up); Brown v. Brown, 842 F. App'x 948, 949 (5th Cir. 2021) ("Generally a district court errs in dismissing a pro se complaint for failure to state a claim under Rule 12(b)(6) without giving the plaintiff an opportunity to amend." (quoting Mendoza-Tarango v. Flores, 982 F.3d 395, 402 (5th Cir. 2020) (internal quotation marks and citation omitted))). 39 Jones v. Greninger, 188 F.3d 322, 327 (5th Cir. 1999) (citation omitted). 40 While no model of clarity, Plaintiff's filings allege that her supervisor (Talavera) treated others with respect but singled her out and ostracized her because of her race, imposed a greater workload on her than her peers, and retaliated against her after raising the issues through internal channels. ECF No. 24 at 2, 3, 5. However, contrary to Defendant's assertion, the complaint is not subject to dismissal for failure to establish a prima facie case. See Swierkiewicz, 534 U.S. at 511 ("This Court has never indicated that the requirements for establishing a prima facie case under McDonnell Douglas also apply to the pleading standard that plaintiffs must satisfy in order to survive a motion to dismiss."); see also Raj, 714 F.3d at 331 (citing Swierkiewicz, 534 U.S. at 510–12). 41 The EEOC issued the right to sue on March 12, 2025, and Plaintiff filed suit on June 11, 2025. ECF Nos. 1, 1-1. Her filing was 91 days after the EEOC issued the notice of rights, but there are no allegations as to what time of day the EEOC emailed the notice or when Plaintiff received it. amendment would be futile because it does not employ the requisite number of employees to qualify as an "employer" under either Title VII or the LEDL, Defendant has failed to attach admissible evidence as to that fact, which the Court could not consider without converting the motion to dismiss into a summary judgment. If Plaintiff can, consistent with her obligations under Rule 11, allege that Defendant Diabetes & Metabolism Associates employed the requisite number of employees as necessary to state a claim, Plaintiff will be granted 14 days within which to do so. Failure to file an Amended Complaint providing sufficient factual allegations necessary to establish this essential element will result in dismissal of her claims.

IV. CONCLUSION

Accordingly, for the foregoing reasons, IT IS ORDERED that Defendant Diabetes & Metabolism Associates' Motion to Dismiss (ECF No. 32) is GRANTED as stated herein; Plaintiff may file an amended complaint within 14 days, if she is able to do so consistent with Rule 11. New Orleans, Louisiana, this 22nc day of April, 2026.

UNITED STATES MAGISTRATE JUDGE